



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

June 30, 2011

To: Mayor Michael D. Antonovich
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

From: William T Fujioka
Chief Executive Officer

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REVIEW OF THE FINANCIAL SCREENING PROCESS USED BY THE COURT AND REVIEW OF THE COUNTY'S EXPENDITURES FOR MINORS' COUNSEL IN FAMILY LAW COURT, INCLUDING ADDITIONAL OPTIONS AND RECOMMENDATIONS (ITEM 71, AGENDA OF APRIL 19, 2011)

On April 19, 2011, your Board instructed the Chief Executive Officer (CEO) to work with County Counsel and the Auditor-Controller (A-C), in consultation with the Los Angeles Superior Court (Court), to report back on the following:

- Provide additional options and recommendations relative to the County's expenditures for minors' counsel in Family Law Court.
- A-C to work with the Court to review the financial screening process used by the Court, and determine whether other enhancements or improvements can be implemented to maximize reimbursement opportunities.

Options for Minor's Counsel

The options below relative to the County's expenditures for minors' counsel in Family Law Court were discussed and developed with the collaboration of the CEO, A-C, County Counsel, Los Angeles County Bar Association, and the Court.

- **Self-Help Legal Access Center (SHLAC)** - Provide additional County resources to the SHLAC to develop a pool of attorneys that focus on minors' counsel cases.

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Analysis – SHLAC's main goal is to educate people. The educational services offered by SHLAC assists those that choose to represent themselves in court. SHLAC does not provide representation or legal advice in any matter. Most children are not capable of being educated sufficiently to represent themselves. The purpose of appointing minors counsel is to have someone represent a child and advocate on his or her behalf. The creation of a pool of attorneys to provide minors counsel services should be separate from SHLAC in order to maintain its status as strictly an educational service.

- **Creation of a Unit within the Public Defender (PD) or Alternate Public Defender (APD)** – Request the PD or APD to develop a proposal to create a minors counsel unit within their respective departments to receive minors' counsel cases.

Analysis – The CEO held discussions with the PD and APD to explore the option of creating a specialized unit within the two departments to represent minors in all minors' counsel cases. In our discussions, it was determined that establishing a Minors' Counsel Unit within the PD or APD would have the following obstacles:

- Government Code section 27706 does not authorize the PD or APD to act as minors' counsel;
 - Requirement of specialized experience requirements for appointment to represent minors are set out in California Rules of Court Rule 5.242;
 - Court approval from the Family Court Supervising Judge; and
 - Foreseeable conflicts of representation in domestic violence, child abduction, child molestation, child support, and abandonment cases.
- **Flat Fee Panel of Attorneys** – Solicit the services of local attorney associations in creating a Family Law Panel of lawyers for court appointment to represent minor children where the Court determines minors' counsel is warranted. The attorneys under the Family Law Panel would be compensated through a flat fee per case metric determined by the complexity of the case.

Analysis – In our efforts to explore the possibility of establishing a flat fee panel of attorneys, we discussed the proposal with external legal organizations. Although our initial discussions have been productive, further analysis is required to determine whether this approach would deliver the operational and cost efficiencies that would warrant further pursuit of this option.

- **Legislative and Maintenance of Effort (MOE) Changes** – Initiate efforts to work with the legislature to modify the current existing State statutes and MOE to remove County responsibility of minors' counsel cases.

Analysis - The existing statutory provisions pertaining to the responsibility for payment of minors' counsel are conflicting. Under the Family Code § 3153(b), the County must pay for Court appointed minors' counsel in the event the parties are not financially able to do so. However, in 1997, the State shifted Trial Court funding from the various counties to the State. As indicated in Government Code §§ 77200, 77201, the Legislature specified that the State assume sole responsibility for funding "Court operations," and that no county shall be responsible for funding such operations.

The term Court operations is defined in Government Code 77003, which includes Court appointed counsel in visitation and custody proceedings as defined under Family Code § 3150. Thus, pursuant to the aforementioned Government Code sections, the State is responsible for payment of Court appointed minors' counsel. However, when the Legislature enacted these provisions of the Government Code, the State did not modify the provisions in the Family Code which specified that the County is responsible for funding these services. These two statutory schemes are obviously in direct contradiction with each other. The statutory contradiction has caused inconsistencies throughout the Courts. For example, the Counties of Los Angeles, Ventura, and Orange provide funding for minors' counsel costs directly. Other counties, such as San Diego, do not provide funding. San Diego Superior Court funds minors' counsel costs directly from its own budget.

In Los Angeles County, these costs remained County costs after the 1997 Trial Court Funding Act. Under the Trial Court Funding Act, each county could contest whether various costs should be included in calculating its annual MOE payment. Some counties included the base year cost of court appointed minors' counsel as Trial Court operations costs, to be included in their annual MOE payments to the State. Other counties, including Los Angeles County, did not include the cost of minors' counsel as a court operation cost and continued to pay such costs directly.

Should the County take the position that the Government Code provisions supersede the Family Code, it is unclear whether the State or the Court would pursue legal action against the County. On the one hand, there is inconsistency throughout the State with regards to which statutory scheme counties follow.

Thus, our position would be consistent with several other counties throughout the State, none of whom have faced legal challenges. On the other hand, in 1997 when Trial Court funding shifted to the State, the Legislature established a specific dollar amount each county had to contribute to the State in support of Trial Court funding. These dollar amounts were based on the amount expended by each county for court operations during FY 1994-95, as reported in the Quarterly Financial Report of Revenues and Court Expenditures.

There are several possible outcomes that could arise as a result of litigation. First, because the two California Code provisions are in direct conflict with each other, it is just as likely as not that the Court will rule against the County. Moreover, even if the Court does rule that the funding of minors' counsel is a State responsibility, there is the possibility that such a ruling would be paired with a ruling that the County must offset any savings by contributing an equal amount to the State for its inability to report minors' counsel costs as expenditures in FY 1994-95. This is a remote possibility because Government Code section 77201 specifies that with limited exception, the amounts counties are required to remit to the State shall not be increased in subsequent years. Moreover, the same section provides a mechanism for a court to challenge a county's reported costs for FY 1994-95, but the court had to present such challenges no later than February 15, 1998. In summary, there is potential risk of exposure in the form of litigation costs should the County take the position that funding of minors' counsel is a State obligation, and it is uncertain what the outcome of litigation would be.

Another option is to work with the California State Association of Counties (CSAC) to resolve the conflict between the Family and Government Codes through legislative action. The County would need to proceed with caution because it is unclear at this point whether the Legislature would resolve the conflict in the County's favor by clarifying that funding minor's counsel is a State responsibility.

- **Partnership with the Court to Create Additional Opportunities for Savings –** Continue pursuing the County and Court partnership to achieve further savings from minors' counsel.

Analysis - Significant savings have been achieved from the actions implemented in the wake of the Board's initial investigation. In response to the County concerns about cost growth, the Court developed other cost containment

programs, including the use of attorney panels and limitations on fees. The following are the criteria developed by the Court:

- A fixed hourly rate, not to exceed \$125 per hour;
- Limits on total annual compensation;
- Requirement of timely submission of claims to smooth out disbursements and to provide judicial officers more opportunity to monitor and control costs; and
- Guidelines on the number of hours that can be compensated.

These are the cost-control mechanisms that an attorney panel, standard contract, or attorney firm would implement as well. The Court rejected the use of a flat, per-case fee due to the wide variability in services required. In addition, the Court has started training judicial officers who are new to Family Law on the use of minors' counsel. They also periodically review Family Law judicial officers' best practices to reduce the cost of appointed counsel.

These measures appear to have been effective in reducing the annual minors' counsel costs from a high of \$5.7 million (FY 2009-10), to a projected \$3.8 million for the current fiscal year.

The latest report of the Professional Appointee Court Expenditures shows that the cost of this program continues to drop, suggesting that the impact of the cost controls implemented by Supervising Judge Marjorie Steinberg, Family Law Department, may not have been fully realized. A further decrease from the current projection by the end of the fiscal year is anticipated, reducing the final cost by more than 30 percent from the initial budgeted amount.

Recommendations

The CEO, A-C, County Counsel, and Court have discussed and reviewed the options presented above. In our analysis, it was evident each option carried various uncertainties or operational challenges. Overall, we believe the following two options warrant further review:

Flat Fee Panel of Attorneys – Although our initial discussions have been positive, CEO staff will need to further discuss this option with our partner agencies and review the real cost and operational efficiencies of the flat fee panel of attorneys.

Partnership with the Court to Create Additional Opportunities for Savings -

We believe the cost controls recently implemented by the Court have proven to be effective. So far, in FY 2010-11, the cost for minors' counsel continues to decline, which seems to indicate that there is potential for further savings.

We also believe the measures implemented by Judge Steinberg are similar to the characteristics found in a flat fee attorney panel organization, without the need for additional resources for another administrative unit to manage an independent attorney panel.

For the reasons above, the CEO is recommending the following:

- Continue to work with attorney organizations to determine the feasibility of a Flat Fee Panel of Attorneys for minors' counsel.
- Work with County Counsel and CSAC to explore a resolution to the current Family and Government Code conflicts.
- Continue to monitor the cost of appointed counsel on a quarterly basis to determine the long-term impact on the Family Law budget.
- Continue efforts between the County and the Court to reduce other non-custody Family Law expenses.

This office will continue to monitor the Family Law budget. Should a change in the downward trend of costs occur, we will revisit other alternatives to cost containment and provide updates and recommendations to your Board.

Review of Financial Screening Process

A-C is in the process of reviewing the Court's financial screening process and other areas (e.g., counsel hourly rate, cost recovery, etc.) to identify where improvements can be made to reduce minors' counsel expenditures. A-C indicates they have reviewed a sample of Court case files, surveyed other counties' minors' counsel hourly rates, and interviewed Family Law Court judges, staff, and management. A-C also reviewed the financial screening/review processes at the Public Defender's Office and the Criminal Court to identify best practices that can be implemented at the Family Law Court. A-C plans to issue their report in July 2011.

Impact of moving \$3.8 million from Trial Courts Budget

At the request of your Board, the Chief Executive Office transferred \$3.8 million from the Trial Courts Operation Indigent Defense budget to Provisional Financing and Uses (PFU). The potential impacts are as follows:

- The Indigent Defense budget ran out of funds in mid-June 2011 and is unable to make payments until funding is restored.
- Court staff will continue to process claims, which will accumulate in a "payment pending queue" until a budget adjustment is approved or the PFU is released.
- Claims in the payment pending queue on June 30, 2011, would be paid out of next year's budget, resulting in a potential funding shortage in FY 2011-12 unless funds are released in this fiscal period.
- Increased call volume from claimants regarding status of payment and concerns related to withholding payments.

In order to minimize the potential impacts above, my staff will continue to work with your Board to address your concerns so we may transfer the \$3.8 million back to the Trial Courts Operation Indigent Defense budget.

Should you have any questions, please do not hesitate to contact me or Deputy Chief Executive Officer Jacqueline A. White, Public Safety, at (213) 893-2374.

WTF:JAW:DC:llm

c: Executive Officer, Board of Supervisors
Alternate Public Defender
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Public Defender
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